PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)
	4015-5823 / P63964.US1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number	Filed
on _____	10596347	2006-06-09
	First Named Inventor	
Signature _____	Caviglia	
	Art Unit	Examiner
Typed or printed name _____	2462	Choudhry

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
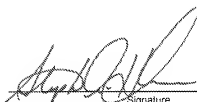(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number _____ 47642

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Stephen A. Herrera
Typed or printed name

919-854-1844
Telephone number

March 14, 2011
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of ____1____ forms are submitted

<u>PRE-APPEAL BRIEF</u>

Claims 8-9 and 13-26 are pending with claims 8, 18, and 25 being independent. Each of these claims stands rejected under 35 U.S.C. § 103 as being unpatentable over Bader (U.S. Patent No. 6,542,934) in view of Egoshi (U.S. Patent No. 6,163,526). However, none of the references, alone or in combination, teach or suggest every limitation of these claims.

Claim 8 is directed to a transport network element that safely and efficiently handles protection switching following the failure and recovery of a primary circuit in a network system. The network element includes an agent that controls a traffic selector to switch between a primary traffic circuit and a secondary traffic circuit, as well as the activation/deactivation of the secondary traffic circuit. Particularly, the agent exchanges signaling messages with a corresponding remote agent to communicate when the primary circuit has fully recovered and to deactivate the secondary circuit. These messages function as a signaling "handshake" to prevent the network element from prematurely switching from the secondary traffic circuit to the primary traffic circuit before the corresponding remote network element is fully recovered.

The primary reference, Bader, discloses returning network traffic from a secondary path back to a primary path once the primary path is recovered and available for traffic. Despite this, Bader is distinguished from claim 8 because Bader does not teach or suggest, "an agent configured to …switch the traffic selector to receive traffic on the primary traffic circuit, and send a RevertRequest message to the remote agent to request the remote agent to deactivate the previously activated secondary traffic circuit, responsive to detecting that the failure on the primary traffic circuit no longer exists." This limitation necessarily requires that <u>all</u> traffic on the secondary path is switched back to the primary path since the secondary path is being <u>deactivated</u>, but <u>only</u> when the primary path is confirmed as being available at the remote network element. Bader, in contrast, requires a <u>phased approach</u> to the switching of traffic from the secondary path to the primary path in which <u>only some</u> traffic is moved when the primary

path becomes available. The secondary path in Bader remains <u>active</u> and other traffic remains on the secondary circuit <u>*despite*</u> the primary path being available.

More specifically, Bader teaches that some communication sessions (i.e., the "non-disruptively re-routable communications") can be transferred immediately upon recovery of the primary path, while others (i.e., non-transferrable sessions) cannot. *Bader*, col. 8, ll. 29-65; col. 9, ll. 21-36. Therefore, in contrast to claim 8, <u>*Bader teaches maintaining the secondary path*</u> <u>*active until all non-transferrable sessions have terminated*</u>. That is, Bader teaches re-routing <u>*only*</u> the "non-disruptively re-routable communications" to the primary path when it becomes available. The other communications (*i.e.*, the non-transferrable sessions) must remain on the secondary path until the user(s) terminate the communication session (e.g., hang-up).

The fact that Bader does not teach or suggest deactivating the secondary path is not surprising. Indeed, the phased approach that Bader relies on would not be possible if a traffic selector is switched whenever the primary traffic circuit is fully restored. The stated fundamental goal of Bader is to provide a method that transfers communication sessions from a secondary path to a primary path in a phased manner. If Bader utilized a traffic selector that switched all sessions back to the primary traffic circuit upon the full restoration of that circuit by deactivating the secondary circuit, as the Office contends, then all non-transferrable sessions in Bader (i.e., those still on the secondary circuit) would be lost. Thus, not only does Bader fail to teach or suggest this limitation of claim 8, but the phased approach of Bader is fundamentally incompatible with the claimed approach in which <u>all traffic is switched back to the primary traffic</u> <u>circuit</u> as soon as the primary traffic circuit is (bi-directionally) available.

Indeed, Bader does not teach or suggest, or even hint at, an agent that switches <u>all</u> <u>traffic back to the primary path</u>, as claimed. Therefore, Bader does not teach or suggest the claimed signaling exchanges that prevent the unnecessary additional switching that causes additional traffic interruption. Since Bader intentionally maintains the secondary circuit path to

support certain on-going communications (even though the primary circuit path has recovered), Bader has no need for an agent to send the claimed RevertRequest and Revert messages recited in claim 8.

More specifically, the claimed RevertRequest message is sent to request the remote agent to deactivate the previously activated secondary traffic circuit responsive to detecting that the failure on the primary traffic circuit no longer exists. As stated above, however, a RevertRequest message, or any message that would perform the same function, would necessarily destroy all the traffic that Bader intentionally leaves communicating on the secondary traffic circuit. In the Final Office Action, the Examiner alleges that Bader discloses this functionality in column 10, lines 55-63, and in Figure 3. However, this passage only generically indicates that the secondary path is deactivated once all communication sessions have been either transferred to the primary path or terminated. The Examiner also equates the claimed RevertRequest message to the "quiesce" message disclosed in Bader. However, the quiesce message is a command to return only transferrable traffic to the primary path. It is not a request for approval to switch all of the traffic from the secondary path and deactivate the secondary path, and Bader never suggests that it is. Bader does not teach or suggest any particular signaling "handshake" messages, as is claimed in claim 8, and never teaches or suggests the specifically claimed RevertRequest message.

Bader also fails to teach or suggest the claimed Revert message as well. The Revert message is sent to the remote agent to have the remote agent deactivate the secondary traffic circuit if the traffic selector is already switched to receive traffic on the primary traffic circuit. Notably, the Revert message of claim 8 is sent by the claimed agent responsive to receiving RevertRequest message from the remote agent, which as stated above, Bader neither sends nor receives. Indeed, it is impossible for Bader to teach sending a Revert message in response to a message that Bader never even mentions.

Despite this fact, the Examiner alleges in the Final Office Action that steps 36 and 38 in Figure 3 of Bader disclose the claimed Revert message. Applicant respectfully directs the Panel's attention to Figure 3 of Bader. As seen in this Figure, steps 36 and 38 merely restart the transferrable sessions on the primary path. Bader does not disclose using a signaling message – such as the Revert message – to accomplish this function.

Therefore, Bader is clearly distinguished from claim 8. Bader does not teach or suggest, "an agent configured to control the traffic selector to switch between the primary traffic circuit and the secondary traffic circuit, and to control activation and deactivation of the secondary traffic circuit by exchanging messages with a corresponding remote agent associated with a remote transport network element." Moreover, Bader specifically fails to teach or suggest the claimed RevertRequest and Revert signaling messages that are used to control restoration switching, as claimed. The secondary reference to Egoshi does not remedy this deficiency of Bader. According to the Final Office Action, Egoshi is cited merely for its alleged disclosure of a traffic selector to switch traffic, and a split module to send output traffic to either the primary or secondary circuit.

Neither Bader nor Egoshi alone teach or suggest every limitation of claim 8. Therefore, their combination necessarily fails to teach or suggest every limitation of claim 8. As such, claim 8 and its dependent claims define patentable subject matter over the cited art.

Notwithstanding the above, the combination of references is improper. The fundamental incompatibility of the references means that no one of ordinary skill in the art would ever think to combine Bader and Egoshi as alleged in the Final Office Action. First, Bader discloses the phased return of traffic to a primary circuit path once that path recovers from a failure, and thus, unquestionably teaches *post-recovery activity*. Egoshi, on the other hand, discloses a method for handling traffic upon detecting that the primary traffic circuit has failed, and therefore, teaches *pre-recovery activity*. Post-recovery and pre-recovery activity necessarily occur at two

different times. The trigger for one (i.e., Egoshi) is the failure of the primary traffic circuit, while the trigger for the other (i.e., Bader) is the recovery of that same circuit. Indeed, the method of one is fundamentally incompatible with the other, and the references cannot be combined.
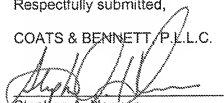
Second, all traffic in Egoshi moves from a working path to a protection path at the same time. This stands in direct contradiction to the requisite phased transfer of Bader based on whether the communication sessions are "non-transferrable" or "non-disruptively terminable." As such, not only is the phased approach of Bader incompatible with claim 8, but it is also incompatible with the approach of Egoshi. Indeed, these two references teach mutually exclusive switching approaches, and as such, cannot be used alone or in combination to render claim 8 or any of its dependent claims obvious.

As for the remaining independent claims, claim 18 is directed to a method of operating a transport network element to activate and deactivate a pre-programmed secondary traffic path in a transmission network. Claim 25 is directed to a corresponding network system having a transport network element. Both claims 18 and 25 recite language similar to that of claim 8, and therefore, are not obvious over Bader in view of Egoshi for reasons that are similar to those stated above. Nor are any of their dependent claims.

In sum, neither reference renders any of the pending claims obvious. Therefore, Applicant respectfully requests the Panel to overturn all rejections and allow all pending claims.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

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Stephen A. Herrera
Registration No.: 47642
1400 Crescent Green, Suite 300
Cary, NC 27518
Telephone: (919) 854-1844
Facsimile: (919) 854-2084